

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REVELRY VINTNERS, LLC,

Plaintiff,

v.

MACKAY RESTAURANT
MANAGEMENT GROUP, INC.;
FIRE & VINE HOLDINGS, LLC; EL
GAUCHO BELLEVUE, LLC; EL
GAUCHO PORTLAND, LLC; EL
GAUCHO SEATTLE, LLC; EL
GAUCHO TACOMA, LLC; EL
GAUCHO VANCOUVER, LLC;
WILSON MACKAY 1, LLC;
WATERFRONT, LLC; DENIM
HOSPITALITY LLC; WALLA
WALLA STEAK CO, LLC; WALLA
WALLA STEAK CO
WOODINVILLE, LLC; T-POST
TAVERN WW LLC; and
YELLOWHAWK RESORT WW,
LLC,

Defendants.

NO. 4:21-CV-5110-TOR

ORDER DENYING PRELIMINARY
INJUNCTION AND GRANTING IN
PART AND DENYING IN PART
PLAINTIFF'S MOTION TO SEAL

ORDER DENYING PRELIMINARY INJUNCTION AND GRANTING IN
PART AND DENYING IN PART PLAINTIFF'S MOTION TO SEAL ~ 1

1 Plaintiff asserts that in late 2018, it learned that Defendant was operating a
2 restaurant dining and loyalty program called the “Revelers Club,” and in 2019
3 discovered that Defendant was selling “Revelers Red” wine and “Revelers”
4 branded whiskey. ECF No. 98 at 7. After speaking with Defendant, Plaintiff
5 states that it was under the impression that both sides had come to an
6 understanding that Defendant would cease using the mark. *Id.* However, Plaintiff
7 asserts that in 2021, Defendant acquired a winery, named Yellowhawk Resort, less
8 than mile from Plaintiff. *Id.* As part of this expansion, Plaintiff asserts that
9 Defendant expanded the “Revelers Club” to Yellowhawk Resort and used the
10 Reveler(s) mark to promote and sell its own wine. *Id.* In 2022, Plaintiff asserts
11 that Defendant took infringement even further by starting a dedicated Revelers
12 Club wine club, called SIP with a “REVELER” tier. *Id.* As part of this expansion,
13 Defendant began selling Revelers-branded wine related merchandise, and gift
14 cards. *Id.* at 8.

15 Defendant, which brands itself as the largest purchaser of wine in
16 Washington State, contends that it initially launched its “Revelers Club” rewards
17 program in 2012. ECF No. 120 at 5. The Revelers Club now contains fourteen
18 properties and 154,000 members. *Id.* According to Defendant, the Revelers Club
19 was initially launched as a mechanism to support and promote the local wine
20 industry through Defendant’s affiliated restaurants. *Id.* at 6. Defendant argues that

1 Plaintiff was fully aware of the Revelers Club over the course of their business
2 relationship. *Id.* Further, it maintains that the agreement between itself and
3 Plaintiff over the use of the mark amounted to Defendant’s ability to sell the
4 remaining inventory of “revel” labeled wine and thereafter cease use on alcohol
5 beverage labels, but that the agreement did not include any mention of the Revelers
6 Club. *Id.* at 6–7.

7 Plaintiff commenced this lawsuit on July 29, 2021. ECF No. 1. Since that
8 time, there has been extensive motions practice, in which Plaintiff has amended its
9 complaint twice, and the Court has issued seven scheduling orders. Plaintiff now
10 seeks a preliminary injunction against all Defendants on the basis that the use of
11 the mark is causing confusion among customers and industry professionals. ECF
12 No. 98 at 8. Defendant opposes on the basis that Plaintiff is not likely to succeed
13 on the merits and the request for injunction is untimely. ECF No. 120 at 7.
14 Plaintiff replied. ECF No. 133.

15 Plaintiff also seeks to unseal ECF Nos. 99-16, 99-17, 99-18, and 99-23,
16 which Defendant has sealed under a “Confidential” and “Highly Confidential –
17 Attorney’s Eyes Only,” label. ECF No. 105 at 2. Defendant responded, requesting
18 the Court maintain the seal. ECF No. 115 at 2.

DISCUSSION

I. Preliminary Injunctions Standard

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011).

“A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

“[P]laintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” *All. for the Wild Rockies*, 632 F.3d at 1131.

The Ninth Circuit has also developed a “sliding scale approach,” which balances the elements of the *Winter* test. *Id.* Under this approach, ““a preliminary injunction could issue where the likelihood of success is such that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’” *Id.* (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003)); *see also Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (“We have also articulated an alternate formulation of the

1 *Winter* test, under which serious questions going to the merits and a balance of
2 hardships that tips sharply towards the plaintiff can support issuance of a
3 preliminary injunction, so long as the plaintiff also shows that there is a likelihood
4 of irreparable injury and that the injunction is in the public interest.” (internal
5 quotation marks and citation omitted)).

6 A preliminary injunction can either be prohibitory or mandatory. *Marlyn*
7 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir.
8 2009). A prohibitory injunction preserves the status quo which is the “last,
9 uncontested status which preceded the pending controversy.” *Id.* at 879. A
10 mandatory injunction “orders a responsible party to take action.” *Id.* at 878.
11 Mandatory injunctions are disfavored and require a higher showing that the “facts
12 and law clearly favor the moving party.” *Garcia v. Google*, 786 F.3d 733, 740 (9th
13 Cir. 2015). Plaintiff requests the Court enjoin Defendant to cease use of
14 derivatives of “Revel,” and therefore is seeking a mandatory injunction.

15 A. Likelihood of Success on the Merits

16 Plaintiff asserts that will succeed on the merits of the case, given the
17 required showing for trademark infringement: (1) it owns a valid trademark, and
18 that (2) it shows the defendant's mark is likely to cause confusion. 15 U.S.C. §
19 1114(1); *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1046
20 (9th Cir. 1999). Plaintiff has demonstrated that it has owned a trademark for

1 REVELRY since 2009 and THE REVELER since 2020. ECF Nos. 100-1 and 100-
2 2. It filed for each mark in 2008 and 2017, respectively. ECF No. 100 at 2.

3 Plaintiff must also demonstrate a likelihood of consumer confusion by a
4 showing of: (1) the strength of the mark; (2) defendant's use of the mark; (3) the
5 similarity of the marks; (4) evidence of actual confusion; (5) defendant's intent; (6)
6 marketing channels; (7) degree of customer care; and (8) likelihood of expansion.
7 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979), *abrogated in*
8 *part, on other grounds recognized by Mattel, Inc. v. Walking Mountain Prods.*, 353
9 F.3d 792, 810 n.19 (9th Cir. 2003). These are nonexclusive factors, and a party
10 need not incorporate all factors to make a requisite showing for injunction.

11 *Surfvivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 631 (9th Cir. 2005).

12 *1. Strength of the Mark*

13 Trademarks are generally categorized as generic (the least distinctive),
14 descriptive, suggestive, and arbitrary or fanciful (the most distinctive). *Two Pesos,*
15 *Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768, (1992). "The more distinctive a
16 mark, the greater its conceptual strength; in other words, a mark's conceptual
17 strength is proportional to the mark's distinctiveness." *M2 Software, Inc., a*
18 *Delaware corporation v. Madacy Ent., a corporation*, 421 F.3d 1073, 1080 (9th
19 Cir. 2005). Plaintiff argues that the REVELRY and REVELER mark are each
20 strong because the company has invested a great deal of capital into protecting the

1 marks and for marketing of the overall wine brand. ECF No. 98 at 9–10. Further,
2 Plaintiff argues that because the marks are at least arbitrary, in that “revel” is a
3 common word that invokes celebration, and thus the marks are entitled to a
4 stronger protection. *Id.* In support of this notion, Plaintiff offers the history of the
5 company’s award-winning wines as evidence of strength in the mark. *Id.*; see *M2*
6 *Software, Inc., a Delaware corporation*, 421 F.3d at 1081 (internal citations
7 omitted) (“A mark's overall strength is relative and cannot be determined by
8 mechanistically assessing its conceptual or commercial strengths. Our court has
9 previously recognized that a suggestive or descriptive mark, which is conceptually
10 weak, can have its overall strength as a mark bolstered by its commercial
11 success.”).

12 Defendant asserts that Plaintiff’s marks are weak, as evidenced by the fact
13 that the words “revelry” and “reveler” are associated with celebrations surrounding
14 wine, and therefore should be classified as “suggestive” on the spectrum of
15 trademark strength. ECF No. 120 at 12. Further, Defendant contends that
16 Plaintiff’s failure to police the use of the mark for “over a decade” weakens the
17 identification function of the mark. *Id.* “Use of similar marks by third-party
18 companies in the relevant industry weakens the mark at issue.” *M2 Software, Inc.,*
19 *a Delaware corporation v. Madacy Ent., a corporation*, 421 F.3d 1073, 1088 (9th
20 Cir. 2005); see also *Arcona, Inc. v. Farmacy Beauty, LLC*, 976 F.3d 1074, 1081

1 (9th Cir. 2020) (holding that evidence common use of a phrase in the beauty
2 industry underscored that a mark held by a beauty and skincare company
3 containing the phrase was not so “unique or strong”). While Plaintiff contends that
4 it learned about Defendant’s infringement in 2018, evidence in the record suggests
5 that it was understood Defendant may have been infringing for much longer by
6 reference to the fact the Plaintiff had attempted to acquire the trademark for
7 “Reveler” but were “blocked.” ECF No. 121-1 at 26. Plaintiff’s inaction against
8 Defendant in protection of “Reveler(s)” indicates that the mark is weak.

9 2. *Use of the Mark, Similarity in Mark, Parties Use of Identical Channels,*
10 *and Evidence of Actual Confusion.*

11 “Where goods are related or complementary, the danger of consumer
12 confusion is heightened.” *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d
13 1280, 1291 (9th Cir. 1992). Defendant and Plaintiff operate in related industries
14 and use derivatives of “revel” in relation to similar spaces. They both advertise
15 wine through email distributions, social media, and wine events. ECF No. 98 at
16 12. Plaintiff contends that although Defendant has paused labelling wine with the
17 REVELERS name, it has nevertheless expanded the use of REVELERS to include
18 advertising for its restaurants and winery, using the name on wine menus in
19 affiliated restaurants, and launching a wine club with a REVELERS tier, which
20 also sells competing wine labels. ECF No. 98 at 10. Further, Plaintiff contends

1 that the actual use of the REVELERS logo is nearly identical to that of REVELRY
2 and THE REVELER. Both appear, according to Plaintiff, with lettering in bold
3 font and dark colors, few or no serifs, and sound similar. ECF No. 98 at 11.
4 Outside of the name itself, Defendant's physical wine bottle labels¹ are notably
5
6
7
8
9
10
11
12

1



different from Plaintiff's award winning label.² ECF Nos. 100 at 5, 100-3 at 5.

However, the name and its relation to the alcohol-driven industry, could reasonably be thought to be misleading.

This use by Defendants has caused actual confusion according to Plaintiff.

Customers, industries professionals, and members of Defendant's staff have

experienced confusion due to the similarity in name and proximity in industry.

ECF No. 98 at 11. However, proving actual confusion is difficult, and courts have

²



REVELRY_003801

1 often discounted such evidence because it was unclear or insubstantial. *AMF Inc.*,
2 599 F.2d at 352 (internal citation omitted). Here, Plaintiff has a handful of
3 instances where retail customers and industry members have considered “the
4 Revelers Club” an extension of Plaintiff’s company. ECF Nos. 99 at 7, 9, ¶ 7 b–d,
5 ¶ 9a, 101 at 2–3, 102 at 2. Together, these sub-factors weigh in favor of finding for
6 confusion, albeit weakly.

7 *3. Defendant’s Intent*

8 Plaintiff contends that Defendant Mackay intentionally used REVELERS
9 knowing it infringed on REVELRY’s mark, as Plaintiff had notified Defendant
10 about the infringement. ECF No. 98 at 12. Plaintiff further argues that Defendant
11 should have been on notice that promoting a wine club and selling wine with a
12 similar name, in a small wine-based community like Walla Walla, would likely
13 expose consumers to confusions. *Id.* Defendant offers that Plaintiff concedes that
14 there was no infringement, as Revelry wines were offered in connection to the
15 Revelers Club when the two entities were in business together. ECF No. 120 at 13.
16 Neither argument is persuasive as to the intent of Defendant, and thus this sub-
17 factor weighs neutrally.

18 *4. Degree of Consumer Care*

19 In general, the expectation how reasonably prudent a consumer is depends
20 on the circumstance, but typically courts find that individuals are more likely to be

1 discerning when making expensive purchases. *Brookfield Commc'ns, Inc. v. W.*
2 *Coast Ent. Corp.*, 174 F.3d 1036, 1060 (9th Cir. 1999). Items like wine and cheese
3 have historically been deemed inexpensive, and therefore consumers are likely to
4 exercise less care. *Id.* (quoting *E. & J. Gallo Winery*, 967 F.2d at 1293). Plaintiff
5 contends that their potential customers have been confused by the similarity in
6 marks, given the nature of the wine market. ECF No. 98 at 13.

7 Defendant contends that the risk of consumers confusion decreases when
8 wine costs more than \$14. ECF No. 120 at 13; *see also Sazerac Co., Inc. v. Fetzer*
9 *Vineyards, Inc.*, 265 F. Supp. 3d 1013, 1038 (N.D. Cal. 2017), *aff'd*, 786 F. App'x
10 662 (9th Cir. 2019). This argument is more persuasive as to the Defendant's use of
11 "revel" derivatives on wine bottles, though it is noted that consumers of wine
12 would likely be alerted to the difference between the award-winning variety
13 produced by Plaintiff. ECF No. 98 at 10. However, it may be difficult for
14 consumers to distinguish between Plaintiff's wine and Defendant's use of
15 "revelers" as it relates to wine-adjacent business opportunities, such as wine clubs.

16 5. *Likelihood of Expansion*

17 Plaintiff presents evidence of Defendants' continued expansion, including
18 the addition of the wine club with a "REVELERS" tier, acquisition of a winery,
19 and selling wine and other alcohol in Walla Walla establishments without
20 Plaintiff's wine. ECF No. 98 at 13. Defendant argues that both entities operate in

1 separate spheres, and therefore, presumptively, any risk of expansion would be
2 negligible. ECF No. 120 at 13. The Court does not agree that the fields each party
3 operates in are entirely separate, and therefore this factor weighs in favor of
4 finding confusion.

5 It is not overwhelmingly clear that Plaintiff would succeed on the merits.
6 However, tipping the scales in favor of Plaintiff, and using the sliding scale
7 approach, the analysis continues. *Farris*, 677 F.3d at 864.

8 B. Irreparable Harm Absent Relief

9 Plaintiff has not demonstrated that it would suffer irreparable harm absent
10 relief, and its inaction weighs against granting a preliminary injunction. “A
11 preliminary injunction is sought upon the theory that there is an urgent need for
12 speedy action to protect the plaintiff’s rights. By sleeping on its rights, a plaintiff
13 demonstrates the lack of need for speedy action.” *Lydo Enterprises, Inc. v. City of*
14 *Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (quoting *Gillette Co. v. Ed Pinaud,*
15 *Inc.*, 178 F.Supp. 618, 622 (S.D.N.Y.1959); accord *Manhattan State Citizens’*
16 *Group, Inc. v. Bass*, 524 F.Supp. 1270, 1275–76 (S.D.N.Y.1981)). Further, a delay
17 in bringing a motion for a preliminary injunction can undercut a party’s argument
18 for irreparable harm. *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015).

19 Plaintiff contends that Defendant’s continued use of its trademark will
20 further dilute the Revelry brand, and thus it faces irreparable harm absent relief.

1 ECF No. 98 at 14. However, as Defendant point out, this action has been pending
2 since July 29, 2021, and evidence in the record suggests that Plaintiff has known
3 about the infringement for much longer. ECF No. 120 at 7. While the Court
4 accepts Plaintiff’s contention that discovery uncovered areas of use of the mark
5 that were previously unknown, Plaintiff still offers no explanation for why, over
6 two and half years later, it faces the kind of “urgent need for speedy action,” that a
7 preliminary injunction provides. ECF No. 133 at 5. The crux of this matter is
8 Defendant’s alleged encroachment on Plaintiff’s trademark, thereby diluting the
9 Revelry brand, and thus Plaintiff has not shown the irreparable harm suddenly
10 faced after the extensive motion practice involved in this lawsuit.

11 C. Balance of Equities

12 Similarly, Plaintiff’s argument as to the balance of equities hinges on
13 potential consumer confusion related to Defendant’s use of “revel” derivatives, but
14 this was evident at the outset of this suit. ECF No. 98 at 14. In contrast,
15 Defendant assert that should injunctive relief be granted, it faces economic loss and
16 disruption in operation. ECF No. 120 at 14. Based on the information before the
17 Court, it does not appear that the balance of equities weighs in favor of Plaintiff
18 given the late date in seeking a preliminary injunction.

19 D. Public Interest

20 “In each case, courts must balance the competing claims of injury and must

1 consider the effect on each party of the granting or withholding of the requested
2 relief.” *Winters*, 555 U.S. at 24 (internal quotation marks and citation omitted).
3 The Court will not grant a preliminary injunction unless the public interests in
4 favor of granting an injunction “outweigh other public interests that cut in favor of
5 not issuing the injunction.” *All. for the Wild Rockies*, 632 F.3d at 1138. Plaintiff
6 argues that the balance of hardship tips in its favor because allowing Defendants to
7 continue infringement would result in further confusion. ECF No. 98 at 14.
8 Further, Plaintiff argues that enforcing a trademark is in the public interest. ECF
9 No. 133 at 11 (quoting *Am. Rena Int’l Corp. v. Sis-Joyce Int’l Co.*, 534 F. App’x
10 633, 636 (9th Cir. 2013)). Defendant argues customers would face “public
11 consequences” if an injunction is granted. ECF No. 120 at 14. Precedent in the
12 Ninth Circuit supports the public interest in protecting consumers from confusion
13 as it relates to similar marks. *Am. Rena Int’l Corp.*, 534 F. App’x at 636; *Internet*
14 *Specialties W., Inc. v. Milon–DiGiorgio Enterprises, Inc.*, 559 F.3d 985, 993 (9th
15 Cir.2009); *Brookfield Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1066
16 (9th Cir. 1999). On the other hand, “delay weakens a claim of likelihood of
17 confusion, because the public may learn to distinguish between similar marks over
18 time, so that any real likelihood of confusion gradually dissipates.” *Grupo Gigante*
19 *SA De CV v. Dallo & Co.*, 391 F.3d 1088, 1104 (9th Cir. 2004) (internal citation
20 omitted). In weighing the public interest, it does not appear that preventing further

1 customer confusion is outweighed by the significant amount of time Defendants
2 have used the mark. Thus, this factor also does not support a grant of injunction.

3 With Plaintiff's likelihood of success on the merits weighs weakly in its
4 favor, and the remaining three factors, irreparable harm faced, balance of equities,
5 and public interest, weighs against it, the Court declines to grant a preliminary
6 injunction.

7 **II. Motion to Seal**

8 In support of the motion a preliminary injunction, Plaintiff seeks to unseal
9 ECF Nos. 99-16, 99-17, 99-18, and 99-23 (sealed at ECF No. 104). ECF Nos. 103
10 and 105 at 2. Defendant has designated these documents as sealed under
11 "Confidential" and "Highly Confidential – Attorney's Eyes Only," pursuant to the
12 labelling outlined in the Court's Stipulated Amended Protective Order:

13 2.1 "Confidential" material shall include information that is not
14 publicly available, the disclosure of which could cause harm to the
15 disclosing party. Such information includes, but is not limited to, the
16 following documents and tangible things produced or otherwise
17 exchanged: sales information and other financial data; private account
information of third parties; vendor information and pricing;
confidential business communications and agreements with third
parties; information or materials that identify potential or current
customers or vendors of a party; and marketing and business strategies.

18 2.2 "Highly Confidential - Attorneys' Eyes Only" material shall include
19 information that the party believes is of such an extremely sensitive or
20 secret nature that disclosure of such information to any other party or
non-party reasonably poses the risk of competitive injury and may
compromise and/or jeopardize its business interests even if protected
by a Confidential designation.

1 ECF No. 48 at 2.

2 As a preliminary matter, parties stipulated to maintaining the “High
3 Confidential – Attorney’s Eyes Only,” sealed labelling for ECF No. 99-23 (Exhibit
4 W). However, after meeting to confer, Plaintiff seeks to unseal ECF Nos. 99-16,
5 99-17, and 99-18. ECF No. 105 at 4.

6 The Ninth Circuit distinguishes between dispositive and non-dispositive
7 motions when determining the standard to apply for sealing and unsealing portions
8 of the record. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th
9 Cir. 2003). To maintain the sealed status of records related to dispositive motions,
10 a party must show that “compelling reasons” exist to maintain the secrecy of the
11 records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir.
12 2006). “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong
13 presumption in favor of access’ is the starting point.” *Id.* at 1178 (quoting *Foltz*,
14 331 F.3d at 1135). “[T]he strong presumption of access to judicial records applies
15 fully to dispositive pleadings, including motions for summary judgment and related
16 attachments.” *Id.* at 1179 (“[R]esolution of a dispute on the merits . . . is at the
17 heart of the interest in ensuring the public’s understanding of the judicial process
18 and of significant public events.”) (internal quotation marks and citation omitted).
19 “The ‘compelling reasons’ standard is invoked even if the dispositive motion, or its
20 attachments, were previously filed under seal or protective order.” *Id.* (citation

1 omitted).

2 However, a “good cause” showing under Rule 26(c) will suffice to seal
3 documents produced in discovery or in relation to non-dispositive motions. *Id.* at
4 1180. “[This] less exacting ‘good cause’ standard applies to private materials
5 unearthed during discovery, and to previously sealed discovery attached to a
6 nondispositive motion.” *Oliner v. Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir.
7 2014) (internal quotation marks and citation omitted). As the Ninth Circuit has
8 explained, “the public has less of a need for access to [these court records] because
9 [they] are often unrelated, or only tangentially related, to the underlying cause of
10 action.” *Id.* (quoting *Kamakana*, 447 F.3d at 1179).

11 While the Ninth Circuit has not drawn a definitive line between what
12 constitutes a dispositive versus non-dispositive motion, it has determined that the
13 crux of the issue is “whether the motion at issue is more than tangentially related to
14 the underlying cause of action.” *Ctr. for Auto Safety v. Chrysler Grp.*, LLC, 809
15 F.3d 1092, 1099 (9th Cir. 2016) (collecting cases). A preliminary injunction often
16 requires a court to address the merits of a case, and often includes evidence
17 produced in the record. *Id.* (citing *Stormans v. Selecky*, 586 F.3d 1109, 1127 (9th
18 Cir. 2009)). Thus, a preliminary injunction may be, but is not always, dispositive.

19 Here, the preliminary injunction would effectively be dispositive as the
20 motion required the Court to consider the merits of the claim. As such, the burden

1 is on the Defendant as the party sealing ECF Nos. 99-16, 99-17, and 99-18, to
2 produce a compelling reason to maintain the seal. *Kamakana*, 447 F.3d at 1178.

3 In support of sealing ECF No. 99-16 (Exhibit P), Defendant asserts that the
4 document contains confidential and non-public information regarding a vendor.
5 ECF No. 115 at 4. However, the Court finds nothing inherently private about the
6 communication as it seemingly deals with the internal review of a decorative or
7 branding seal under Defendants' umbrella of brands. ECF No. 104-1 at 2–3.
8 Defendant does not assert that the seal itself is protected information. ECF Nos.
9 115 at 5, 116 at 2, ¶ 4. In the interest of protecting vendor identity, ECF No. 99-16
10 (Exhibit P), shall be unsealed on the condition that all identifying information as it
11 relates to vendors, including vendor name and contact information, be redacted.

12 In support of sealing ECF No. 99-17 (Exhibit Q), Defendant asserts that it
13 contains confidential and non-public information with one of its vendors
14 surrounding the marketing and planning of an event. ECF No. 115 at 4. The Court
15 finds, pursuant to Federal Rule of Civil Procedure 26(c)(1)(G), that exposing the
16 information contained in ECF No. 99-17 would amount to disclosing commercial
17 information. ECF No. 104-2 at 2–4. Therefore, ECF No. 99-17 (Exhibit Q) shall
18 remained sealed.

19 In support of sealing ECF No. 99-18 (Exhibit R), Defendant asserts that it
20 contains confidential and non-public information with one of its investors in

1 Yellowhawk Resort. ECF No. 115 at 5. However, the Court again finds nothing
2 inherently private about the communication other than the investor's name and
3 contact information. ECF No. 104-3 at 2–3. In the interest of protecting the
4 investor's privacy ECF No. 99-18 (Exhibit R), shall be unsealed on the condition
5 that the name, contact information, and all other defining features, including the
6 email signature block, of the investor be redacted.

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Preliminary Injunction (ECF No. 98) is **DENIED**.

2. Plaintiff's Motion to Unseal (ECF No. 105) is **GRANTED in part** and **DENIED in part**.

a. ECF No. 99-16 (Exhibit P) shall be unsealed pursuant to a redaction of the vendor's name and contact information.

b. ECF No. 99-17 (Exhibit Q) shall remain sealed.

c. ECF No. 99-18 (Exhibit R) shall be unsealed pursuant to a redaction of the investor's name, contact information, and all other identifying features.

d. Pursuant to the parties' agreement, ECF No. 99-23 (Exhibit W) shall remain sealed.

e. Defendant shall redact ECF Nos. 99-16 and 99-18 consistent with this Order and re-file the redacted documents on the record on or before **March 7, 2024**.

The District Court Executive is directed to enter this Order and furnish copies to counsel.

DATED February 29, 2024.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge